

§ 150.447 The record.

(a) Any testimony that is taken in-person or by telephone is recorded and transcribed. The ALJ may order that other proceedings in a case, such as a prehearing conference or oral argument of a motion, be recorded and transcribed.

(b) The transcript of any testimony, exhibits and other evidence that is admitted, and all pleadings and other documents that are filed in the case constitute the record for purposes of an ALJ decision.

(c) For good cause, the ALJ may order appropriate redactions made to the record.

§ 150.449 Cost of transcripts.

Generally, each party is responsible for 50 percent of the transcript cost. Where there is an intervenor, the ALJ determines what percentage of the transcript cost is to be paid for by the intervenor.

§ 150.451 Posthearing briefs.

Each party is entitled to file proposed findings and conclusions, and supporting reasons, in a posthearing brief. The ALJ will establish the schedule by which such briefs must be filed. The ALJ may direct the parties to brief specific questions in a case and may impose page limits on posthearing briefs. Additionally, the ALJ may allow the parties to file posthearing reply briefs.

§ 150.453 ALJ decision.

The ALJ will issue an initial agency decision based only on the record and on applicable law; the decision will contain findings of fact and conclusions of law. The ALJ's decision is final and appealable after 30 days unless it is modified or vacated under § 150.457.

§ 150.455 Sanctions.

(a) The ALJ may sanction a party or an attorney for failing to comply with an order or other directive or with a requirement of a regulation, for abandonment of a case, or for other actions that interfere with the speedy, orderly or fair conduct of the hearing. Any sanction that is imposed will relate

reasonably to the severity and nature of the failure or action.

(b) A sanction may include any of the following actions:

(1) In the case of failure or refusal to provide or permit discovery, drawing negative fact inferences or treating such failure or refusal as an admission by deeming the matter, or certain facts, to be established.

(2) Prohibiting a party from introducing certain evidence or otherwise advocating a particular claim or defense.

(3) Striking pleadings, in whole or in part.

(4) Staying the case.

(5) Dismissing the case.

(6) Entering a decision by default.

(7) Refusing to consider any motion or other document that is not filed in a timely manner.

(8) Taking other appropriate action.

§ 150.457 Review by Administrator.

(a) The Administrator of CMS (which for purposes of this subsection may include his or her delegate), at his or her discretion, may review in whole or in part any initial agency decision issued under § 150.453.

(b) The Administrator may decide to review an initial agency decision if it appears from a preliminary review of the decision (or from a preliminary review of the record on which the initial agency decision was based, if available at the time) that:

(1) The ALJ made an erroneous interpretation of law or regulation.

(2) The initial agency decision is not supported by substantial evidence.

(3) The ALJ has incorrectly assumed or denied jurisdiction or extended his or her authority to a degree not provided for by statute or regulation.

(4) The ALJ decision requires clarification, amplification, or an alternative legal basis for the decision.

(5) The ALJ decision otherwise requires modification, reversal, or remand.

(c) Within 30 days of the date of the initial agency decision, the Administrator will mail a notice advising the respondent of any intent to review the decision in whole or in part.

(d) Within 30 days of receipt of a notice that the Administrator intends to